RECEIVED
SEP 29 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

REPLY COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Cellular Telecommunications Industry Association ("CTIA")[1] respectfully submits these comments in the above mentioned proceeding.[2] CTIA agrees with commenters that the Commission's slamming rules should not apply to CMRS because

[1] CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers, and includes forty-eight of the fifty largest cellular and broadband PCS providers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

[2] *See* In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, *Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration*, CC Docket No. 94-129, FCC 97-248 (released July 15, 1997) ("Notice").

doing so is unnecessary and would interfere with competition in the CMRS marketplace.

Section 258 of the Telecommunications Act makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe."[3] Section 258 was intended to extend the protections of the Commission's pre-existing anti-slamming rules, which applied only to customer choice of long distance carriers, to local exchange carriers.[4] Although the Commission's Notice appears to encompass this intent, certain language nonetheless could be interpreted to mean that the Commission has extended its anti-slamming rules to CMRS.

I. APPLICATION OF THE COMMISSION'S ANTI-SLAMMING RULES TO CMRS IS UNNECESSARY AND HARMFUL TO COMPETITION

CTIA concurs with Bell Atlantic Mobile that application of the Commission's anti-slamming rules to CMRS is unnecessary and extends beyond the intent of Section 258. Although the text of the Commission's Notice refers solely to long distance and local exchange carriers and makes no mention of wireless carriers, the proposed rule language

---

[3] 47 U.S.C. § 258(a).

[4] See Comments of Bell Atlantic Mobile, Inc. at 9 (citing H.R. Rep. No. 104-458, 104th Cong., 2d sess. 136 (1996)).

could be broadly interpreted to apply to CMRS.[5] The application of anti-slamming regulations to CMRS, either in terms of unauthorized changes of the CMRS carrier itself or of the underlying long distance carrier,[6] is unwarranted.

Anti-slamming rules are unnecessary to prevent unauthorized changes between CMRS providers because such changes are not possible in the current network environment.[7] Unlike in the landline context, numerous technical hurdles must be overcome by the subscriber before the subscriber can change service providers. First, numerous wireless technologies are in place across the country (*i.e.*, analog cellular, GSM, CDMA, TDMA). A wireless service provider may not be capable of "stealing" another provider's customer because it may be operating on an incompatible system, in which case the customer would be required to obtain a new handset. Second, a wireless user's handset is programmed to automatically register with the carrier with which the user has a service contract. Hence, even if the competing service provider used a compatible

---

[5] See Appendix C. Additionally, the fact that the Commission concludes in the Initial Regulatory Flexibility Analysis that numerous wireless carriers will be affected by the proposed rule changes indicates that CMRS may fall within the scope of the proposed rules.

[6] The Commission declines to adopt any specific definition of "slamming," but notes that Congress referred to slamming as "illegal changes in subscriber selections." Notice at n.14. This very broad definition arguably could include unauthorized changes in subscriber selections of either the CMRS carrier or the underlying long distance carrier.

[7] See Bell Atlantic Mobile Comments at 4.

network technology, the user's handset still would require reprogramming so that calls would be initiated through the new system. Finally, if a competing carrier successfully transfers a customer to its network, it will not have access to the "customer profile," which provides crucial information necessary for accurate billing and protection against fraud. Due to these technical difficulties, and as noted in the record, the Commission has had no formal slamming complaints brought against CMRS providers alleging that they engaged in slamming or facilitated slamming by other carriers.[8] Given the significant difficulties carriers would experience, additional government regulation is clearly unwarranted.

In addition to the technical obstacles associated with slamming between CMRS carriers, equally significant business reasons exist that prevent CMRS carriers from slamming customers by changing long-distance carriers without proper authorization.[9] Although some CMRS carriers do provide long distance service on a resale basis, long distance service provided in conjunction with CMRS service is merely ancillary to the wireless service being provided and does not constitute a primary source of revenue.[10] Given the highly competitive nature of the wireless industry, long

---

[8] Id. at 3.

[9] See AirTouch Comments at 3-4.

[10] AirTouch Comments at 3; 360 Communications Comments at 7.

distance rates also are often bundled in with the monthly service charge in order to encourage use of airtime. The associated rates are often highly competitive.[11] Under these circumstances, CMRS carriers have no business incentive to change customers' underlying long distance carriers. Additional government regulation in what now is a largely unregulated industry is unnecessary and, in many instances, could be detrimental.

With at least five competitors in each market, the wireless industry already has become a highly competitive industry. As a result, customers have developed higher expectations in terms of customer service. Individuals are now able to walk into any Circuit City or Radio Shack, buy a wireless phone, and receive service that same day. This turn around time differs greatly from the days it can take to initiate wireline service. Imposing additional administrative burdens on carriers and ultimately customers when there is no ability to slam CMRS customers and little incentive for carriers to slam their customers' choice of long distance service is unwarranted and only likely to thwart carriers' ability to satisfy customer demand for quick and efficient service. Thus, any anti-slamming regulation should not be applied to CMRS.[12] If anti-slamming rules are applied to CMRS carriers, additional

---

[11] AirTouch Comments at 3.

[12] See also Bell Atlantic Mobile comments at 7-8.

burdens such as in-bound verification should not be established. Additionally, more efficient verification procedures such as the "welcome package" should be retained.[13]

II. APPLICATION OF THE COMMISSION'S ANTI-SLAMMING RULES TO CMRS EXTENDS BEYOND THE COMMISSION'S AUTHORITY AND IS CONTRARY TO THE COMMISSION'S POLICIES

As discussed above, Section 258 was intended to extend the protections of the Commission's anti-slamming rules to customer selections of local exchange carriers.[14] Because CMRS was not subject to the Commission's existing slamming rules at the time that Section 258 was enacted, and since the legislative history clearly limits discussion to long distance and local exchange service, Section 258 should not apply to CMRS.[15]

Application of anti-slamming rules also would contravene the Commission's policies, as determined by Congress. The Commission acknowledges that the anti-slamming rules are predicated on the need to establish and promote equal access.[16] Equal access, however, is not required of CMRS carriers. Section 332(c)(8) of the Act specifically notes that CMRS carriers "shall not be required to provide equal access to common carriers for the provision

---

13 See AirTouch Comments at 4-5.

14 House Report.

15 See also Bell Atlantic Mobile Comments at 9-11.

16 Notice at ¶ 5.

of telephone toll services."[17] In enacting this provision, Congress recognized that the absence of equal access obligations would allow CMRS carriers to pass on savings to their customers through volume discounts and least-cost routing options and that these options were appropriate given CMRS carriers' lack of market power.[18] Because the predicate of the anti-slamming rules is nonexistent in the CMRS context, requiring CMRS carriers to adhere to the rules provides no benefit, yet imposes significant costs.

---

[17] 47 U.S.C. § 332(c)(8).

[18] AirTouch Comments at 3.

CONCLUSION

For the reasons stated above, the Commission should refrain from applying its anti-slamming rules to CMRS carriers. Doing so is unwarranted, needlessly burdensome, and would not be based on sound policy grounds.

Respectfully submitted,

Wendy C. Chow
Staff Counsel

Michael Altschul
Vice President and
General Counsel

Randall S. Coleman
Vice President,
Regulatory Policy & Law

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
1250 Connecticut Ave., N.W.
Washington, D.C. 20036

September 29, 1997